

Growers adapting to rules on rest breaks for ag workers; nuances of pay subject of discussion

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While budgeting for the upcoming season, Yakima Valley growers know they have to add a new cost to bring in the harvest: paying piece rate workers for their rest breaks.

Last summer, the state Supreme Court ruled that the state law providing paid rest breaks included farmworkers earning piece rates during harvest. Moreover, the court said those workers should be paid for breaks at their regular rate, not just at minimum wage if they are earning more while working.

While most growers are adapting to the new ruling, the nuances of how best to comply with that court decision remain unclear for some employers because of the varied ways harvest workers get paid, such as changing piece rates throughout the season or using productivity or retention bonus on top of hourly wages.

The state Department of Labor and Industries has been meeting with business and labor groups to gather questions and suggestions as it works to develop guidelines for interpreting the court's decision in specific situations. A draft of the guidance should be available this spring, agency spokesman Tim Church said.

"One of the initial reactions from farmers was to pay hourly with a production bonus, but that's sort of like a piece rate in and of itself," said Sarah Wixson, a Yakima attorney who represented several grower groups that filed friend-of-the-court briefs in the case.

In other words, if workers know they can earn a bonus at the end of the season for reaching a certain productivity goal, that bonus has to be factored in, so that rest break wages can be boosted accordingly, Wixson said.

"It's not particularly farmer friendly," Wixson said of the court decision. "When you pay piece rate, you have to run two individualized calculations to ensure each worker is making the minimum wage and to see what the rest break wage should be."

While complicated, the court ruling was clear and most growers haven't had trouble complying, said Mike Gempler, executive director of the Washington Growers League.

"The Supreme Court was very clear, you have to provide, enforce and promote breaks, and you have to pay extra for them at the so-called regular rate," Gempler said.

But Adam Belzberg, the attorney who represented Sakuma Brothers Farm in the rest break case, said there are still some open questions in the court's decision he hopes Labor and Industries will clarify. One question is whether employers and workers can agree in a contract to rest break pay that's lower than the regular rate, as long as it meets minimum wage, he said.

"Generally, under Washington law, you can have a separate agreement on pay as long as it's above minimum wage," Belzberg said.

Such contracts are rare for seasonal farmworkers.

Despite concerns that the rest break ruling would push more employers to switch to hourly wages for harvest, Wixson, Belzberg and Gempler said most growers are making the new rules work.

“Piece rate is what is expected by workers because it rewards productivity, so it’s good for the farmer and good for the worker,” Wixson said. “I don’t think we are going to see a lot of change on that in this Valley.”